



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Docket No. 210331-0074

RIN 0648-BK32

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2021

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2021 summer flounder recreational fishery. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to constrain recreational catch to the summer flounder recreational harvest limit and thereby prevent overfishing on the summer flounder stock.

DATES: Comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0034, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0034 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by

NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

SUPPLEMENTARY INFORMATION:

Background

Summer flounder is cooperatively managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. The Council and the Commission's Summer Flounder Management Board meet jointly each year to recommend recreational management measures for summer flounder. NMFS must implement coastwide measures or approve conservation equivalent measures per 50 CFR 648.102(d) as soon as possible following the Council and Commission's recommendation. This action proposes maintaining conservation equivalency for 2021, as jointly recommended by the Council and Board.

Recreational Management Measures Process

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) establishes a Monitoring Committee for summer flounder consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the Monitoring Committee to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the recreational harvest limit (RHL) for the

upcoming fishing year. The FMP limits the choices for the types of measures to minimum and/or maximum fish size, per angler possession limit, and fishing season.

The Council and the Board then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council forwards its recommendations to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the target specified for summer flounder in the FMP and with all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

Summer Flounder Conservation Equivalency Process

Conservation equivalency, as established by Framework Adjustment 2 (66 FR 36208; July 11, 2001), allows each state to establish its own recreational management measures (possession limits, size limits, and fishing seasons) to achieve its state management target partitioned by the Commission from the coastwide RHL, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (71 FR 42315; July 26, 2006) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the RHL will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of non-preferred coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation by

the Commission that the proposed state or regional measures developed through its technical and policy review processes achieve conservation equivalency, NMFS may waive, for the duration of the fishing year, the permit condition found at 50 CFR 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the exclusive economic zone (EEZ) are subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures. Conservation equivalency expires at the end of each fishing year (December 31).

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee or that submits measures that are not conservationally equivalent to the coastwide measures.

The development of conservation equivalency measures happens at both the Commission and the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state or regional measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2021 summer flounder management

measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures but is an equal participant in the review process, along with all the member states. NMFS neither approves nor implements individual states' measures, but retains the final authority either to approve or to disapprove the use in Federal waters of conservation equivalency in place of the coastwide measures. NMFS will publish its determination on 2021 conservational equivalency as a final rule in the **Federal Register** following review of the Commission's determination and any public comment on this proposed rule.

2021 Summer Flounder Recreational Management Measures

In a typical year, preliminary catch and effort data through Wave 5 (September – October) are used to evaluate the performance of recreational management measures and propose any changes for the following year to achieve the RHL. However, due to the COVID-19 pandemic, no recreational catch estimates are available for 2020. Nevertheless, regional effort data are available for consideration because the Fishing Effort Survey had no interruption in distribution, and response rates are similar or higher than usual. Preliminary data suggest that effort in 2020 was similar to 2019 effort. In fishing year 2019, recreational summer flounder landings exceeded the RHL by only 1 percent. The 2021 RHL (8.32 million lb, 3,774 mt) is 8 percent higher than the 2019 and 2020 RHLs.

Based on the Council's and the Board's recommendations, and as part of the conservation equivalency process, NMFS also proposes a suite of non-preferred coastwide measures identified by the Council and Board, which would be in effect should NMFS not approve conservation equivalency. These measures are expected to constrain

the overall recreational landings to the 2021 recreational harvest limit, should conservation equivalency be disapproved based on the Commission's recommendation letter. For 2021, non-preferred coastwide measures approved by the Council and Board are a 19-inch (48.3-cm) minimum fish size, a 4-fish per person possession limit, and an open season of May 15-September 15. These measures are identical to the non-preferred 2020 coastwide measures. The coastwide measures become the default management measures in the subsequent fishing year, in this case 2022, until the joint process establishes either coastwide or conservation equivalency measures for the next year.

The 2021 precautionary default measures recommended by the Council and Board are identical to those in place for 2020: A 20.0-inch (50.8-cm) minimum fish size; a 2-fish per person possession limit; and an open season of July 1-August 31, 2021. These measures may be assigned by the Commission in the event that conservation equivalency is approved but a state or region does not submit a conservationally equivalent proposal.

Similar to 2016-2020, the 2021 management program adopted by the Commission divides the coastline into six management regions: 1) Massachusetts; 2) Rhode Island; 3) Connecticut and New York; 4) New Jersey; 5) Delaware, Maryland, and Virginia; and 6) North Carolina. Each state within a region must implement identical or equivalent measures (size limit, bag limit, and fishing season length), and the combination of those measures must be sufficient to constrain landings to the RHL.

All state regulations are expected to remain at the status quo from 2020, with the exception of minor changes in New Jersey and Massachusetts. New Jersey is proposing an adjustment to the season to allow for a start date of May 28, 2021, coinciding with the Friday before Memorial Day, as was practiced over the last several years. Massachusetts is considering changing the opening date so that it is a Saturday, consistent with prior years. Saturday, May 15 and Saturday, May 22 are the two Saturday alternatives under consideration.. The final combination of state measures will be detailed in a letter from

the Commission to the Regional Office certifying that the combination of state and regional measures have met the conservation objectives under Addendum XXXII to the Commission's Interstate FMP and are expected to constrain catch to the 2021 RHL. After that letter is received, NMFS will publish a final recreational management measures rule with a conservation equivalency determination for 2021.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures. According to the commercial ownership database, 379 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2017-2019 period. All of those business affiliates are categorized as small businesses. The SBA defines a small for-hire recreational fishing business as a firm with receipts of up to \$7.5 million. Estimating what proportion of the overall revenues of these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder as a recreational species in the Mid-Atlantic and New England, revenues generated from summer flounder are likely very important for many of these firms at certain times of the year. The 3-year average (2017-2019) combined gross receipts (all for-hire fishing

activity combined) for these small entities was \$50,625,923, ranging from less than \$10,000 for 111 entities (lowest value \$85) to over \$1,000,000 for 9 entities (highest value \$3.1 million).

This proposed action would waive Federal measures in lieu of state measures designed to reach the 2021 harvest limit. The economic impacts of the proposed measures in this action will be affected in part by the specific set of measures implemented at the state level for summer flounder conservation equivalency. The impacts are likely to vary by state, but with two minor exceptions, measures are the same as those in place for 2020. The summer flounder recreational measures under conservation equivalency are expected to neither reduce nor increase recreational satisfaction or for-hire revenues when compared to 2020. Demand for for-hire trips is expected to remain approximately the same as in 2020. Thus, market demand is expected to be similar in 2021, although this is likely to vary by state, depending on each state's current measures and how they choose to modify them in 2021.

Because the 2021 measures are expected to be mostly identical to 2020, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 31, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2021 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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